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218080



November 14, 2006

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW (7<sup>th</sup> fl.)  
Washington, DC 20423-0001

Dear Secretary Williams:

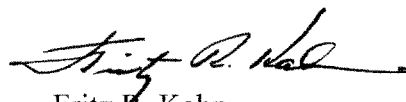
Enclosed for filing in STB Docket No. AB-33 (Sub-No. 156), Union Pacific Railroad Company—Abandonment—In Harris, Fort Bend, Austin, Wharton and Colorado Counties, TX, are the original and ten copies of the Notice of Intent Partially to Terminate Trail Use of The Metropolitan Transit Authority of Harris County, Texas.

Expedited consideration of the Notice is respectfully requested.

An additional copy of this letter and of the Notice are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,

  
Fritz R. Kahn

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Office of Proceedings  
NOV 14 2006  
Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.



STB Docket No. AB-33 (Sub-No. 156)

UNION PACIFIC RAILROAD COMPANY  
– ABANDONMENT –  
IN HARRIS, FORT BEND, AUSTIN, WHARTON AND COLORADO COUNTIES, TX

**EXPEDITED CONSIDERATION RESPECTFULLY REQUESTED**

NOTICE OF INTENT PARTIALLY TO TERMINATE TRAIL USE  
OF  
THE METROPOLITAN TRANSIT AUTHORITY  
OF HARRIS COUNTY, TEXAS

Cassie B. Stinson  
Andrews Kurth LLP  
600 Travis (#4200)  
Houston, TX 77002  
Tel.: (713) 220-4684

**ENTERED**  
**Office of Proceedings**

**NOV 14 2006**

**Part of**  
**Public Record**

Fritz R. Kahn  
Fritz R. Kahn, P.C.  
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Attorneys for

THE METROPOLITAN TRANSIT AUTHORITY  
OF HARRIS COUNTY, TEXAS

Dated: November 14, 2006

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

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STB Docket No. AB-33 (Sub-No. 156)

UNION PACIFIC RAILROAD COMPANY  
– ABANDONMENT –  
IN HARRIS, FORT BEND, AUSTIN, WHARTON AND COLORADO COUNTIES, TX

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**EXPEDITED CONSIDERATION RESPECTFULLY REQUESTED**

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NOTICE OF INTENT PARTIALLY TO TERMINATE TRAIL USE  
OF  
THE METROPOLITAN TRANSIT AUTHORITY  
OF HARRIS COUNTY, TEXAS

The Metropolitan Transit Authority of Harris County, Texas ("METRO"), pursuant to 49 C.F.R. 1152.29(c)(2), gives notice of its intent to terminate its trail use of a portion of the 100-foot right-of-way of the railroad line formerly operated by the Union Pacific Railroad Company and acquired by METRO pursuant to the Board's Decision and Certificate of Interim Trail Use or Abandonment, served November 8, 2000.

The portion of the right-of-way which METRO proposes to relinquish as the trails operator is a strip of land of varying width extending between Milepost 15.65, at or near Dairy Ashford Road, and Milepost 20.76, at or near Barker Cypress Road, for a distance of approximately 5.11 miles in Harris County, Texas. At its widest point, the strip of land would be approximately 95 feet wide for a few feet in length, leaving approximately 5 feet of the original

right-of-way for rail banking and interim trails use by METRO. Approximately 29.15 acres of the original right-of-way would be removed from rail banking and interim trail use. The purpose of freeing the strip of land of the trails condition is to permit its abandonment and unencumbered conveyance by METRO to the Harris County Toll Road Authority, which seeks the land for construction and operation of toll road lane for the Westpark Tollway. See, STB Docket No. AB-33 (Sub-No. 93X), Union Pacific Railroad Company–Abandonment Exemption–In Whittier Junction-Colima Junction Line in Los Angeles County, CA, served July 21, 2006; Docket No. AB-397 (Sub-No. 1X), Tulare Valley Railroad Company–Abandonment Exemption–In Kings and Tulare Counties, CA, served June 15, 1998.

In exchange, the Harris County Toll Road Authority will arrange for the conveyance to METRO of fee simple title to parcels of land comprising a parallel strip of land of varying width immediately to the south of and abutting the strip of land being conveyed to the Harris County Toll Road Authority. Thus, METRO will continue to have a 50-foot wide corridor between the referenced mileposts for the restoration of railroad service and interim trail use – no fewer than 5 feet to continue to be held by it as the trails operator and the remainder, up to 45 feet in width, to be held by METRO in fee simple. The configuration of the parcels making up the strip of land to be conveyed to METRO has been calculated and designed to provide for appropriate curvatures for rail traffic from the original corridor onto and along the residual and replacement strip of land.

Upon issuance of the revised Decision and Certificate of Interim Trail Use or Abandonment requested by this Notice, the conveyance by METRO to Harris County Toll Road Authority and the conveyance by Harris County Toll Road Authority to METRO would be

effected by Exchange Deeds containing metes and bounds descriptions of the parcels of land so conveyed by each party to the other. The Exchange Deeds would be exchanged between the parties simultaneously and recorded in the real property records of Harris County, Texas. Thus METRO will at no time own a right-of-way less than 50 feet in width between Milepost 15.65, at or near Dairy Ashford Road, and Milepost 20.76, at or near Barker Cypress Road, for the restoration of railroad service and interim trail use.

1. A copy of the Decision and Certificate of Interim Trail Use or Abandonment, served November 8, 2000, is attached.

2. A schematic map of the Westpark Tollway as it will extend between Dairy Ashford Road and Barker Cypress Road is attached.

3. Copies of the revised Decision and Certificate of Interim Trails Use or Abandonment should be sent, as follows:

a. The railroad formerly owning and operating the right-of-way:

Union Pacific Railroad Company  
101 No. Wacker Drive (#1920)  
Chicago, IL 60606  
Attn.: Mack H. Shumate, Jr. Esq.

B. The owner of the right-of-way and trail operator:

The Metropolitan Transit Authority of Harris County, Texas  
P. O. Box 61429  
Houston, TX 77008-1429  
Attn.: Paula Alexander, Esq., General Counsel

WHEREFORE, the Metropolitan Transit Authority of Harris County, Texas, asks that the Decision and Certificate of Interim Trail Use or Abandonment be revised and reissued to relieve the approximately 29.15 acres of right-of-way segments being conveyed by it to the Harris

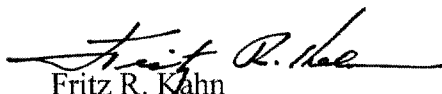
County Toll Road Authority of their commitment for future railroad service and for trail use in the interim and to permit the affected railroad line's abandonment to be consummated effective December 1, 2006, but otherwise to leave the remainder of the original right-of-way described in the Decision, served November 8, 2000, subject to the trails condition in effect and, hence, available for the restoration of railroad service and for uses consistent with the National Trails System Act in the meantime.

Respectfully submitted,

THE METROPOLITAN TRANSIT AUTHORITY  
OF HARRIS COUNTY, TEXAS

By its attorneys,

Cassie B. Stinson  
Andrews Kurth LLP  
600 Travis (#4200)  
Houston, TX 77002  
Tel.: (713) 220-4684

  
Fritz R. Kahn  
Fritz R. Kahn, P.C.  
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Washington, DC 20036-1601  
Tel.: (202) 263-4152

Dated: November 14, 2006

SERVICE DATE - NOVEMBER 8, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 156)

UNION PACIFIC RAILROAD COMPANY-ABANDONMENT-IN HARRIS, FORT BEND,  
AUSTIN, WHARTON AND COLORADO COUNTIES, TX

Decided: November 7, 2000

On July 21, 2000, Union Pacific Railroad Company (UP) filed an application under 49 U.S.C. 10903 seeking authority to abandon a 49.42-mile line of railroad known as the Bellaire Subdivision, extending from milepost 3.48 near Bellaire Junction in Houston, to milepost 52.9 near Chesterville, in Harris, Fort Bend, Austin, Wharton and Colorado Counties, TX.<sup>1</sup> UP also seeks to be exempted from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. On August 22, 2000, a request for issuance of a certificate of interim trail use (CITU) and for imposition of a public use condition was jointly filed by the Sierra Club (Houston Chapter) and the Houston Area Bicyclists Alliance (collectively, Sierra Club/Bicyclists Alliance). On September 5, 2000, a request for a CITU was also filed by The Metropolitan Transit Authority of Harris County, Texas (METRO). The filing included METRO's opposition to the public use request of the Sierra Club/Bicyclists Alliance.<sup>2</sup> On September 22, 2000, METRO filed supplemental comments addressing and supporting UP's request for an exemption from the OFA and public use provisions. On October 3, 2000, the Sierra Club/Bicyclists Alliance filed a supplemental comment in opposition to METRO's request for a CITU. On October 13, 2000, METRO moved to reject the October 3 filing or, in the alternative, for leave to file a reply. Upon review of the record, we will grant the application, subject to standard employee protective conditions, and issue a CITU.

PRELIMINARY MATTER

In addition to the above-mentioned filings, TXI Operations, LP (TXI) filed on September 27, 2000, a motion to intervene and protest or, in the alternative, to request the imposition of conditions on the abandonment that would allow a shortline carrier to provide service to shippers on the line by connecting with other railroads, including UP. Specifically, TXI requests that we require UP to remove restrictive covenants that forbid freight rail service on the line, to grant METRO or its contract railroad operator trackage rights on UP track that is not

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<sup>1</sup> Notice of the filing of the application was served and published in the Federal Register (65 FR 49055-56) on August 10, 2000.

<sup>2</sup> On September 19, 2000, UP also filed opposition to the imposition of a public use condition and its agreement to the imposition of a trail use condition.

being abandoned, and to provide reasonable rates for connecting freight from the line. Alternatively, TXI requests that the abandonment application be granted only for the portion of the line east of U.S. Highway 6. On October 6, 2000, UP filed a reply urging us to deny TXI's motion because it was filed after the protest due date, and alternatively, responding to the merits. UP states that it is prepared to waive the restrictive covenant, if deemed necessary, when it conveys the easement to METRO,<sup>3</sup> and argues that the trackage rights and rate relief requested by TXI cannot be granted in this abandonment proceeding.

The motion to intervene will be denied and TXI's protest will not be considered. TXI was provided with a Notice of Intent to Abandon on June 26, 2000, pursuant to 49 CFR 1152.20(a)(2), and was also served with a copy of the abandonment application on July 20, 2000, but it did not file a timely protest.<sup>4</sup> Although it styles its filing an "Emergency Motion to Intervene and Protest," TXI does not give a reason for filing over 20 days beyond the protest period. Because TXI has not provided us with a basis upon which to grant its motion, we have no alternative but to deny it. In any event, consideration of the late protest would not affect the result reached here. UP has agreed to waive the restrictive covenant against freight operations as requested by TXI,<sup>5</sup> and this proceeding is not the appropriate forum in which to grant the trackage rights<sup>6</sup> and rate relief requested by TXI.<sup>7</sup>

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<sup>3</sup> As will be discussed in the Background section, infra, UP operates the line pursuant to an easement.

<sup>4</sup> Protests were due by September 5, 2000. TXI did not file until September 27, 2000.

<sup>5</sup> In its September 22 supplemental comments, METRO states that it is mindful that the proposed abandonment may impact those shippers located at Clodine, TX, and that, because it does not anticipate restoring rail service and offering commuter operations on the line between Eagle Lake, TX, and Clodine within the next 10 years, it is willing to negotiate a limited-term contract with a modified certificate operator pursuant to 49 CFR 1150.21 following the Board's approval of the abandonment.

<sup>6</sup> See Consolidated Rail Corporation—Abandonment Exemption—in Erie County, NY, STB Docket No. AB-167 (Sub-No. 1164X), et al., slip op. at 10 (STB served Oct. 7, 1998).

<sup>7</sup> Compare Union Pacific Railroad Company—Abandonment—Between Bascule Bridge and Clarksburg, Yolo County, CA, Docket No. AB-33 (Sub-No. 64), slip op. at 12-13 (ICC served Sept. 10, 1990) (no need found to regulate rates in an abandonment proceeding).



## BACKGROUND

UP<sup>8</sup> presently provides rail operations pursuant to an easement which was reserved along with the common carrier obligation to provide service when the right-of-way was sold to METRO by SP on December 30, 1992. The sale was the subject of a declaratory order proceeding before the Interstate Commerce Commission (ICC), the Board's predecessor, wherein the ICC determined that the purchase of the Bellaire Branch,<sup>9</sup> with the operating easement reserved by SP, was not subject to its jurisdiction. See Metro. Transit Auth. of Harris County, TX-Declar. Order, 9 I.C.C.2d 559 (1993). UP now seeks abandonment of the common carrier obligation which it inherited from SP.

The stated reasons for abandonment are: (1) freight revenues from the line are insufficient to justify the costs of operation and maintenance; (2) there is no reasonable prospect that traffic and revenues will increase sufficiently in the foreseeable future to justify continued operation of the line; and (3) the right-of-way is urgently needed for a higher purpose. We will explore these issues below.

## TRAFFIC, OPERATIONS, AND REVENUES

There are five shippers on the line: Wenco Distributors; TXI; Pioneer Concrete (Pioneer); Ringling Bros. and Barnum & Bailey Circus; and Reliant Energy. According to UP, the traffic for these shippers during the base year (May 1, 1999-April 30, 2000) amounted to 203 carloads, consisting of lumber, boards, clay, chemical waste, circus equipment, and animal stock. Revenue generated from this traffic amounted to \$540,807. UP projects the same 203-carload level for the forecast year (July 1, 2000-June 30, 2001) and estimates forecast year freight revenues of \$559,678. There is no overhead traffic.

UP states that the only significant decline in traffic has been in aggregate commodities—sand and gravel. According to UP, the decline was due to a derailment that occurred in February 1999 on TXI's spur track that resulted from a wide-gauge problem. Because of that problem, UP was unable to continue service in these commodities to TXI and its tenant industry, Pioneer, until TXI repaired its spur track to accommodate the heavy unit trains.

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<sup>8</sup> UP is the successor in interest to the Southern Pacific Transportation Company (SP) pursuant to the Board's authority granted in Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996).

<sup>9</sup> Also known as the Westport Line, the Bellaire Branch extended from milepost 3.48 at Dunlavy Street in Houston along Westpark Boulevard to milepost 61.2 at Eagle Lake.

This was never done. UP submits that TXI's track is still capable of receiving single, light-weight loads.<sup>10</sup>

Service on the line west of Bellaire Junction is provided, as needed, 6 days a week by one local train which originates in Rosenberg, TX, on the Glidden Subdivision. Service on the line east of Bellaire Junction is provided once a year by a yard job working out of Hardy, TX, for circus train equipment and stock cars.

#### AVOIDABLE COSTS

Avoidable costs are costs that applicant will cease to incur if it abandons and discontinues service over the line. UP has submitted data showing avoidable on-branch costs for the base and forecast years. These include: maintenance-of-way and structures, maintenance of equipment (including depreciation), transportation, locomotive and freight car costs (other than return). UP's total avoidable on-branch costs are \$602,544 for the base year and \$603,354 for the forecast year. UP's total avoidable off-branch costs are \$464,052 for the base year and \$473,412 for the forecast year.

#### LINE CONDITION AND REHABILITATION

The main track or active portion of the Bellaire Subdivision, between milepost 5.36 and milepost 52.9, is constructed of a mix of continuous welded and jointed rail. The line has a maximum speed of 25 m.p.h., except from milepost 5.36 to milepost 22.2, and from milepost 33.4 to milepost 52.9, where the maximum speed is 10 m.p.h. UP states that the main track has been maintained to Federal Railroad Administration Class 2 safety standards and requires no rehabilitation. In the base year, UP incurred normalized maintenance costs of \$524,604 and it estimates that normalized maintenance costs for the forecast year would be \$529,833.<sup>11</sup>

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<sup>10</sup> UP explains that one of its employees misinterpreted the ban on heavy unit trains as applying to all traffic and apparently informed TXI that it could not ship anymore. UP submits that TXI has since been told that it can still receive silica gel cars to its facility. TXI apparently made other arrangements for transportation of sand and gravel to its readymix concrete plants. UP surmises that Pioneer made other arrangements as well.

<sup>11</sup> UP explains that the high normalized maintenance costs are due to the existence of 93 road crossings, 48 of which are signalized.

## OPPORTUNITY COSTS AND SUBSIDIZATION COSTS

Opportunity costs (or total return on value of road property) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. UP calculates that the line's total opportunity cost for the forecast year would be \$2,904.<sup>12</sup> It estimates that the total subsidization cost (consisting solely of administrative costs) would be \$5,597 in the forecast year.

## SUMMARY OF COST AND REVENUE EVIDENCE

UP has made a prima facie case for abandonment supported by extensive workpapers. The data submitted by UP conform to Board regulations at 49 CFR 1152.30-36 and appear reasonable. UP's evidence indicates that for the forecast year, the line would generate total revenues of \$559,678 and total avoidable costs of \$1,076,766 (on-branch costs of \$603,354, plus off-branch costs of \$473,412), resulting in an avoidable loss from operations of \$517,088. When opportunity costs of \$2,904 are factored in, the total forecast year avoidable loss is \$519,992. The estimated subsidy payment is \$525,589. A complete summary of the revenue and cost data is set forth in the appendix.<sup>13</sup>

## ALTERNATIVE TRANSPORTATION

UP states that the line is situated between two other parallel UP lines. The Glidden Subdivision, UP's main line between Houston and San Antonio, runs adjacent to U.S. Highway 90A and roughly parallels the Subdivision. UP's Smithville Subdivision parallels Interstate Highway 10 for approximately 20 miles. Its eastern terminus at Katy, TX, is approximately 7 miles north of the line. Going westward, the Smithville Subdivision diverges from the Bellaire Branch, and at Sealy, TX, is 12 miles north of Wallis, TX, at milepost 44.8 on the line. UP also submits that motor carrier service is readily accessible in the area.

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<sup>12</sup> Under Abandonment Regulations—Costing, 3 I.C.C.2d 340 (1987), the opportunity cost of road property is computed on an investment base equal to the sum of: (1) allowable working capital; (2) current income tax benefits (if any) resulting from abandonment; and (3) the net liquidation value (NLV) of the line. The investment base (or valuation of the road properties) is multiplied by the current 15.6% nominal rate of return, to yield the nominal return on value which must be adjusted by applying a holding gain (or loss) to reflect the increase or decrease in value a carrier will expect to realize by holding assets for 1 additional year. In this case, the opportunity cost is low because the right-of-way, including all land, track, track structures and bridges, was sold to METRO in 1992, and hence there is no income tax consequence or NLV.

<sup>13</sup> There is a discrepancy of \$1.00 between some of the amounts in the appendix and the corresponding amounts submitted by UP in the text of the application, which apparently is the result of rounding off numbers.

### SHIPPER AND COMMUNITY INTERESTS

Letters in support of the abandonment were filed by METRO, the Harris County Toll Road Authority (Toll Road Authority), and Fort Bend County. METRO states that it currently operates several transit facilities along the rail corridor and it is continuing to study corridor use for high capacity transit. METRO and the Toll Road Authority have recently concluded an agreement for the Toll Road Authority to purchase a portion of the right-of-way for the construction of a limited access toll road between two nearby limited access highways, Texas Highway 6 and U.S. Highway 59. They state that the toll road will provide access for METRO buses and will relieve congestion on these highways and on other parallel thoroughfares between downtown Houston and its western suburbs. Fort Bend County expects that the highway construction that the abandonment will allow will be beneficial to the county.

### DISCUSSION AND CONCLUSIONS

The statutory standard governing an abandonment or discontinuance of service is whether the present or future public convenience and necessity permit the proposed abandonment or discontinuance. 49 U.S.C. 10903(d). In implementing this standard, we must balance the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce. Colorado v. United States, 271 U.S. 153 (1926). Essentially, the Board must determine whether the burden on the railroad from continued operation is outweighed by the burden on the shippers and the community from the loss of rail service.

The record shows that UP's continued operation of the line will result in a total forecast year operating loss of \$517,088, and when opportunity costs of \$2,904 are factored in, a total annual loss of \$519,992. There is nothing of record to suggest that the line will be profitable in the future. Thus, we conclude that the line will suffer continual losses if the proposed abandonment is denied.

In view of the lack of evidence contradicting UP's estimates, we conclude that any harm to the shippers and the community from the proposed abandonment is outweighed by the demonstrated harm to UP and the burden on interstate commerce through continued operation of the line. We will therefore grant the abandonment application.

### EXEMPTION REQUESTS

UP requests to be exempted from the OFA requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. Exemptions from 49 U.S.C. 10904-05 have been granted from time to time, provided the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.<sup>14</sup> In support of its request, UP states that the right-of-way is already owned by a public entity, METRO, and will continue to be used for an important public purpose, a public transit corridor. In addition, UP points to METRO's impending conveyance of a portion of the right-of-way to the Toll Road Authority for a toll road<sup>15</sup> and the fact that there is no overriding public need for continued rail service.

As noted earlier, METRO opposes the request of Sierra Club/Bicyclists Alliance for a public use condition. Even though METRO acknowledges that a person who files under the National Trails System Act (Trails Act) may also file for public use, it argues that the only public use proposed by Sierra Club/Bicyclists Alliance is for a trail and that the result of imposing a public use condition will be to tie up the property for 180 days.

Here, because the right-of-way is already owned by a public entity for public purposes, a public use for the right-of-way has already been established. Accordingly, we will grant UP's request and exempt the proposed abandonment from the public use provisions of 49 U.S.C. 10905 under our authority at 49 U.S.C. 10502. We find that application of the public use provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 and application of the provision is not needed to protect shippers from the abuse of market power.

Under 49 U.S.C. 10904, any financially responsible person (and all government agencies are deemed to be financially responsible) may file an OFA to acquire a line that the Board has authorized to be discontinued or abandoned or subsidize the losses of the existing operator. METRO proposes to transfer only a portion of the right-of-way to the Toll Road Authority. Moreover, METRO does not anticipate that it will be ready to restore rail service and offer commuter operations on the line for at least 10 years. Because METRO has no immediate planned use of the property for rail service and UP does not provide sufficient reason to foreclose the OFA process, we will deny its request to be exempted from the OFA provisions. We note that an OFA to continue freight rail service would not appear to preclude or hinder the proposed toll road construction.

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<sup>14</sup> See Union Pacific Railroad Company—Abandonment Exemption—In Monroe County, IA, STB Docket No. AB-33 (Sub-No. 153X), slip op. at 4 (STB served Sept. 1, 2000).

<sup>15</sup> METRO states that UP erred in its application in stating that METRO had agreed to convey a 12-mile segment of the right-of-way to the Toll Road Authority. METRO states that it is conveying a 50-foot wide corridor to the Toll Road Authority and retaining the remaining 50 feet of the 100-foot wide right-of-way for METRO's future railroad use.

### LABOR PROTECTION

In approving this abandonment application, we must ensure that affected rail employees will be adequately protected. 49 U.S.C. 10903(b)(2). We have found that the conditions imposed in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979) (Oregon), satisfy the statutory requirements, and we will impose those conditions here.

### ENVIRONMENTAL ISSUES

The Board is also required to consider the environmental and energy impacts of the proposed abandonment. UP has submitted an environmental report with its application and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on August 23, 2000, and requested comments by September 21, 2000.<sup>16</sup> No comments to the EA have been filed. In its EA, SEA recommended that no environmental conditions be imposed on the abandonment. We agree with SEA's recommendation.

### TRAIL USE

The Sierra Club/Bicyclists Alliance and METRO request issuance of a CITU pursuant to section 8(d) of the Trails Act, 16 U.S.C. 1247(d). The Sierra Club/Bicyclists Alliance and METRO each have submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29. As previously noted, UP filed a letter stating that it is willing to negotiate trail use, Sierra Club/Bicyclists Alliance filed a supplemental comment in opposition to METRO's request for a CITU, and METRO moved to reject Sierra Club/Bicyclists Alliance's supplemental comment as a prohibited reply to a reply under 49 CFR 1104.13(c). We will grant the motion to reject. Because interim trail use agreements are voluntary, where more than one entity makes an interim trail use proposal, the railroad is free to choose which, if any, organization it wishes to deal with. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986) (Trails). Because the requests of the Sierra Club/Bicyclists Alliance and METRO comply with the requirements of 49 CFR 1152.29 and UP is willing to enter into negotiations, we will issue a CITU. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, subject to the conditions imposed below. See

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<sup>16</sup> A Notice to the Parties was served on August 25, 2000, to correct the beginning milepost designation stated in the EA from 3.84 to 3.48.

49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that trail use could be delayed, or even foreclosed, by the financial assistance process. As stated in Trails, 2 I.C.C.2d at 608, OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and certificate will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(1). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the abandonment application will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

We find:

1. The present or future public convenience and necessity permit the abandonment of the above-described line, subject to: (1) the employee protective conditions in Oregon; and (2) the condition that UP comply with the interim trail use/rail banking procedures, as set forth below.

2. Abandonment of service over the line will not have a serious, adverse impact on rural and community development.

3. Application of the public use provisions of 49 U.S.C. 10905 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 and application of the provision is not needed to protect shippers from the abuse of market power.

4. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. TXI's motion to intervene is denied.

2. METRO's motion to reject the Sierra Club/Bicyclists Alliances' October 3, 2000 supplemental comment is granted.

3. UP's request for an exemption from the public use requirements of 49 U.S.C. 10905 is granted under 49 U.S.C. 10502. Its request for an exemption from the OFA requirements of 49 U.S.C. 10904 is denied.

4. This application is granted subject to the conditions specified above.

5. If interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

6. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

7. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and certificate and request that it be vacated on a specified date.

8. If no agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and certificate, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.

9. UP must promptly provide any interested persons the information they require to formulate an OFA to acquire or subsidize the line.

10. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 17, 2000, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

11. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

12. Provided no OFA has been received, this decision will be effective December 8, 2000. Any petition to stay or petition to reopen must be filed as provided at 49 CFR 1152.25(e).

13. Pursuant to the provisions of 49 CFR 1152.29(e), UP shall file notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by November 8, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.



STB Docket No. AB-33 (Sub-No. 156)

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

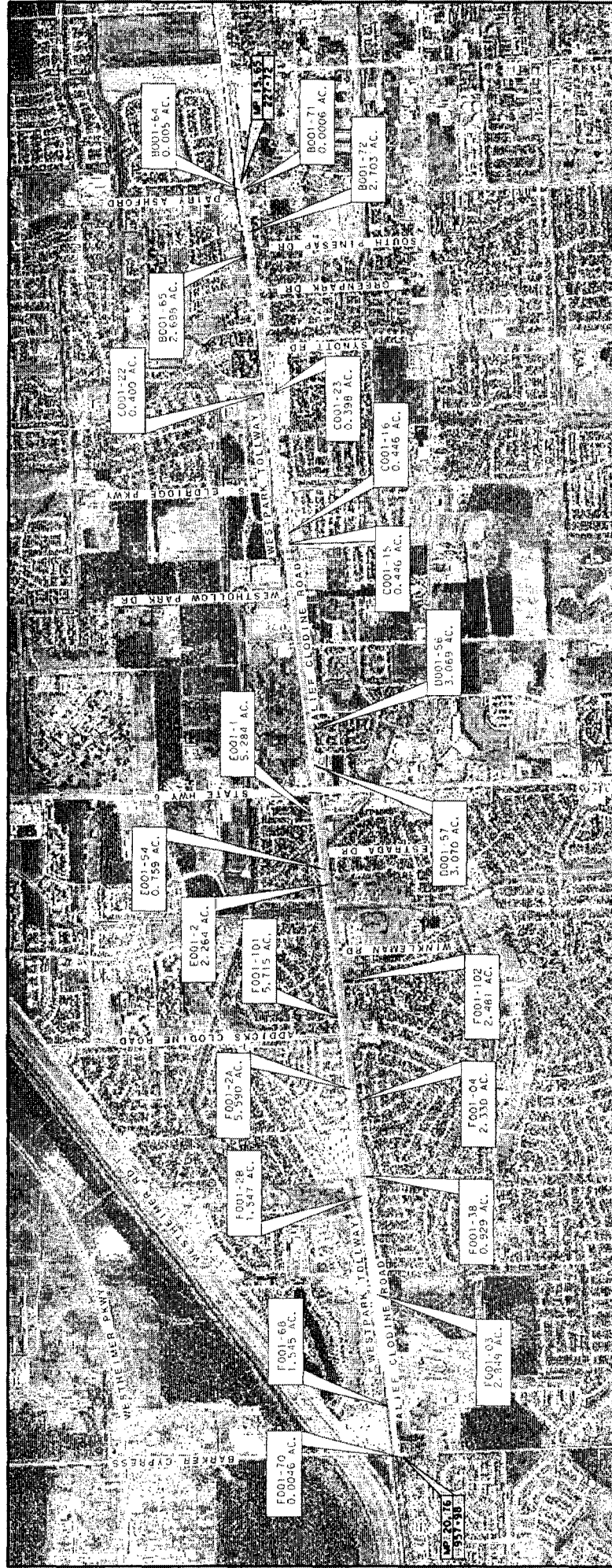
Vernon A. Williams  
Secretary

**APPENDIX  
COST AND REVENUE DATA**

	Railroad's Base Year	Railroad's Forecast Year
1. Freight Orig. and/or Term. on Branch	\$540,807	\$559,678
2. Bridge Traffic	0	0
3. All Other Revenue and Income	0	0
4. Total Attributable Revenue (Ls. 1 thru 3)	\$540,807	\$559,678
5. On-branch Costs:		
a. Maintenance-of-Way and Structures	\$524,604	\$529,833
b. Maintenance-of-Equipment (Including Depreciation)	8,147	7,979
c. Transportation	47,658	45,795
d. General & Administrative	0	0
e. Deadheading, Taxi and Hotel	0	0
f. Overhead Movement	0	0
g. Freight Car Costs (Other Than Return)	6,877	6,989
h. Return on Value - Freight Cars	4,243	3,546
i. Return on Value - Locomotives	11,015	9,212
j. Revenue Taxes	0	0
k. Property Taxes	0	0
l. Total (Ls. 5a thru 5k)	\$602,544	\$603,354
m. Holding Gains - Locomotives	0	0
n. Holding Gains (Loss) - Freight Cars	0	0
o. Net On-br Costs (Ls. 5l - 5m & 5n)	\$602,544	\$603,354
6. Off-branch Costs:		
a. Off-Branch Costs (Other Than Return)	\$399,551	\$410,041
b. Return on Value - Freight Cars	64,501	63,371
c. Holding Gains - Freight Cars	0	0
d. Net Off-br Costs (Ls. 6a+6b - 6c)	\$464,052	\$473,412
7. Total Avoidable Costs (L. 5o + L. 6d)	\$1,066,596	\$1,076,766
8. Rehabilitation	\$0	\$0
9. Administrative Costs (Subsidy Year Only)	5,408	5,597
10. Casualty Reserve Account	0	0
11. Total Subsidization Cost (Ls. 8 thru 10)	\$5,408	\$5,597
12. Valuation of Road Properties		
a. Working Capital	\$21,621	\$21,833
b. Income Tax Consequences	0	0
c. Net Liquidation Value	0	0
d. Total (Ls. 12a thru 12c)	\$21,621	\$21,833
13. Nominal Rate of Return	15.6%	15.6%
14. Nominal Return on Value (L. 12d x L. 13)	\$3,373	\$3,406
15. Holding Gain (Loss)	\$0	\$502
16. Total Return on Value (L. 14 - L. 15)	\$3,373	\$2,904
17. Avoidable (Loss) or Profit from Operations (L. 4 - L. 7)	(\$525,789)	(\$517,088)
18. Avoidable (Loss) or Profit Including Return on Value (L. 4 - Ls. 7&16)	(\$529,162)	(\$519,992)
19. Estimated Subsidy Payment (L. 4 - Ls. 7, 11, & 16)	(\$534,570)	(\$525,589)

# WESTPARK CORRIDOR




EXCHANGE AGREEMENT BETWEEN  
METROPOLITAN TRANSIT AUTHORITY, HARRIS COUNTY, TEXAS  
AND HARRIS COUNTY



SCALE: 1" = 2000'



## LEGEND :

-  PARCELS TO BE CONVEYED FROM HARRIS COUNTY TO METRO
-  PARCELS TO BE CONVEYED FROM METRO TO HARRIS COUNTY
-  MILE POST MARKERS

**METRO**


Metropolitan Transit Authority of Harris County, Texas

NOVEMBER 6, 2006

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing Notice upon each of the parties by mailing copies thereof, via prepaid first-class mail, to their respective representatives.

Dated at Washington, DC, this 14<sup>th</sup> day of November 2006

  
Fritz R. Kahn